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No. 84-582

In The

Supreme Court of the United States

October Term, 1984

SPYRIDON KOLLIAS,

Petitioner,

vs.

BAY TANKERS, INC. and KINGSWAY TANKERS, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

Reply Brief for Petitioner 1

Conclusion 5

TABLE OF CITATIONS

Cases Cited:

Aguilar v. Standard Oil Co., 318 U.S. 724 (1943) 4

Cove Tankers Corp. v. United Ship Repair, 528 F. Supp. 101 (1981), aff'd., 683 F. 2d 38 (1982) 2

P.C. Pfeiffer Co., Inc. v. Ford, 444 U.S. 69 (1979) 2

Statutes Cited:

33 U.S.C. §903(a) 2

46 U.S.C. §564 (now Section 10301) 2

46 U.S.C. §713 (now Section 10101) 2

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The issue before this Court is whether or not the Second Circuit's extension of the Longshoremen's and Harbor Workers' Compensation Act to encompass the high seas and foreign territorial waters should stand.

Review by certiorari is fully warranted in this case because the impact and result of the decision below is to encourage individual shipowners to circumvent the Jones Act and other federal statutes designed to protect persons working on the high

seas thus jeopardizing the safety and welfare of such workers. The decision below is an attempt by the Second Circuit to impose a legal mandate and conclusion that men can be shipped out on American flag ships for the purpose of performing work in furtherance of the ship's voyage without signing Articles on foreign voyages and without being seamen and crew members entitled to the protection of American maritime law. This decision signals the effective dismantling of a federal statutory scheme designed to ensure the safety of life at sea.

The failure and refusal of the District Court to decide petitioner's status as a matter of law and further refusal to charge the jury on either the statutory definition of seamen, 46 U.S.C. §713 (now Section 10101) or the statutory requirement that persons on a foreign voyage sign Articles, 46 U.S.C. §564 (now Section 10301) is the result of the District Court's determination to impose its own philosophy and economic analysis of the shipping industry on the jury. *See Cove Tankers Corp. v. United Ship Repair*, 528 F. Supp. 101 (1981), *aff'd.*, 683 F. 2d 38 (1982).

The District Court's erroneous instruction to the jury that a person could be a seaman or a ship repairman whether at sea or in port demonstrates its deliberate refusal to abide by the jurisdictional coverage limitations established by Congress in the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act. As this Court recently observed, the 1972 Amendments replaced a single-situs requirement with a two-part situs and status standard. "Situs" is defined in the statute as the *"navigable waters of the United States" including "adjoining pier, wharf, dry dock, terminal, building way, marine railway or other adjoining areas customarily used by an employer in loading, unloading, repairing or building a vessel."* §3(a) 33 U.S.C. §903(a) cited in *P.C. Pfeiffer Co., Inc. v. Ford*, 444 U.S. 69 (1979) (emphasis added).

The respondent has prevailed thus far solely because of the District Court's erroneous interpretation of the "situs" requirement for coverage under the Longshoremen's and Harbor Workers' Compensation Act.

Further the record below belies respondent's contention that the petitioner's work on board the vessel did not contribute to its mission. The District Court fully recognized that the petitioner and the other five men were working aboard the vessel under the ship's supervision and in aid of its mission — stating:

> "I think I have previously commented and I think that one of the most significant bits of testimony was the chief engineer's observation which I think he repeated twice that they (the petitioner *et al.*) were aboard and they (the shipowner) were going to keep them working and keep them busy because as long as they were paying for them, they were going to keep them fully occupied." (Record, p. 642).[1]

During the trial, the respondent admitted and the court concurred that if the petitioner were found to be a seaman, then there would be no further dispute concerning respondent's liability:

> "The Court: Plaintiff takes the position that there is no issue as to liability, no contested issue as to liability.

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1. The record establishes that the petitioner and other so-called "riding crew" transferred lubricating oil, cleaned the inert gas system, repaired cherry pickers absolutely required for the use of giant hose lines needed to discharge cargo, worked on the anchor windlass, and repaired and maintained numerous other pieces of ship's equipment on a daily basis under the supervision of the Chief Engineer. Many details of their work remain obscure because the Chief Engineer destroyed his worksheets nightly, as he admitted under oath.

> Respondent: If he is a member of the crew it is a different ballgame, I'm afraid.
>
> The Court: By saying it is a different ballgame, are you saying that if the jury finds that the plaintiff is a member of the crew that assuming the validity of that finding, that there is no issue as to liability?
>
> Respondent: That's correct." (Record, p. 584).

By respondent's own admission, the petitioner was injured in the course of his employment. Since the respondent destroyed its work records on a daily basis, respondent should be estopped from claiming that the work performed by the petitioner did not contribute to the ship's mission.

Only by erasing the boundary line separating the statutory "ship repairman" from the Jones Act seaman, would the jury have determined that the petitioner was not a seaman. While it has been held that a man can be a Jones Act seaman on shore, *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943), there is neither a statute nor a judicial precedent to support respondent's contention that a man can be a statutory ship repairman while on the high seas and in foreign territorial waters. It is significant that in the cases cited by the respondent, the claims arose either from injuries occurring at the water's edge or on special purpose vessels, thus creating a factual issue concerning the status of the injured worker. No such issue or question of fact exists in the instant case because the injury occurred during the course of a sixty-two day voyage on the high seas and in the course of petitioner's employment. Therefore, the jury verdict in this case was totally contrary to law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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